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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In re )  
)  
Amendment of § 73.202(b), ) MM Docket No. 95-49  
Table of Allotments, ) RM-8558  
FM Broadcast Stations )  
(Llano and Marble Falls, Texas) )

To: The Acting Chief, Allocations Branch,  
Mass Media Bureau

COMMENTS

Maxagrid Broadcasting Corporation, the licensee of radio station KBAE(FM), formerly KLKM(FM), Channel 284C3, Llano, Texas, hereby tenders its Comments on the Notice of Proposed Rule Making, DA 95-884 (released May 1, 1995) ("NPRM"), in this proceeding.

I. BACKGROUND

1. Maxagrid seeks to relicense KBAE from Llano, Texas to Marble Falls, Texas as Marble Falls' first local service. So that Llano does not lose a local service, Maxagrid suggested the allotment of Channel 242A to Llano. Schematically, Maxagrid has proposed:

<u>Community</u>	<u>Present</u>	<u>Proposal</u>
Llano	284C3	242A
Marble Falls	---	285C3

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2. Marble Falls is a growing, incorporated community in Burnet County. Marble Falls clearly satisfies the FCC's standards for a licensable community. Pierce, Texas et al., 8 FCC Rcd 3528 (M.M. Bur. 1993); Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982). However, Marble Falls has **no** local service.

3. Despite Marble Falls' merit as a licensable community and its current lack of local service, the staff is unsure that "... [Maxagrid's] proposal would result in a preferential rearrangement of allotments." The staff advances several concerns. First, although the reallocation would provide a first local service to Marble Falls, the FCC staff is concerned that the reallocation would deprive Llano of local service. The staff is unsure whether there is any actual interest in Channel 242A on the part of Maxagrid or some third party. The staff is also concerned as to which areas and populations will receive new service, and which will lose existing service. Finally, the staff seeks any additional information as to the overall public-interest benefits that would flow from a grant of Maxagrid's proposal.

## **II. ARGUMENT**

### **The Staff Must Adopt Maxagrid's Marble Falls Proposal As A Preferential Rearrangement of Allotments**

#### **1. Llano Will Not Lose A Local Service**

4. Staff approval of Maxagrid's proposal will not deprive Llano of local service. Maxagrid intends to apply for Channel 242A at Llano, and upon grant of Maxagrid's application, to promptly construct and place that facility into broadcast service to Llano. Moreover, assuming no one else applies for Channel 242A at Llano, Maxagrid intends to

simultaneously commence program tests on Channel 285C3 at Marble Falls and on Channel 242A at Llano. In this case, there would be no gap in local aural service to Llano.<sup>1</sup>

## **2. Relicensing KBAE To Marble Falls Will Serve The Public Interest**

5. In weighing Maxagrid's proposal, the staff must honor the mandate of Congress, set forth in § 307(b) of the Communications Act:

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is a demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

47 U.S.C. § 307(b). In furtherance of that duty, the FCC, via Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982), set the following priorities:

- first aural service;
- second aural service;
- first local service; and
- other public-interest matters.<sup>2</sup>

Maxagrid's proposal to bring a first local service to Marble Falls without loss of local service to Llano earns preferences under both Elements Three (first local service) and Four (other

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<sup>1</sup>Llano also enjoys local visual service from Channel 14 Station KXAN-TV.

<sup>2</sup>Second aural service and first local service rank coequally. Other public-interest matters include second local service, more efficient use of the spectrum, etc.

public-interest factors, by virtue of a more efficient use of the spectrum).

6. According to the *Rand McNally 1995 Commercial Atlas and Marketing Guide (126th Ed.)*, Marble Falls had a previous (1980) Census population of 3,252, and a 1990 Census population of 4,007. That corresponds to a growth rate of 23%. According to the same source, Marble Falls has its own Post Office, zip code, bank, and enjoys railroad service from the Austin & Northwestern Rail Road.<sup>3</sup> Although that source indicates Llano also has its own Post Office, zip code, bank, and railroad service, it also shows that the community has suffered a loss of population. According to the *1995 Commercial Atlas*, Llano had a 1980 Census population of 3,071 and a 1990 Census population of 2,962 -- nearly a 4% decrease.<sup>4</sup> Moreover, the *1995 Commercial Atlas's* notation that Llano enjoys railroad service is wrong. See Exhibit A.

7. The NPRM correctly observes that Llano is the County Seat of Llano County, and the Commission has on occasion favored County Seats -- when other demographic evidence is favorable. However, Llano's **un**favorable demographic trends confirm that shifting KBAE to Marble Falls on Channel 285C3 would better serve the public interest than keeping KBAE on Channel 284C3 at Llano. Beyond suffering a loss of population, Llano is no longer the preeminent community in Llano County. Per Exhibit A, both Kingsland and

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<sup>3</sup>Local Chamber of Commerce information (set forth in Exhibit A, the Declaration of Duane Fox) indicates that the population of Marble Falls is 4,500.

<sup>4</sup>Local Chamber of Commerce data peg Llano's population at 3,000. See Exhibit A.

Horseshoe Bay, which are also in Llano County, outrank Llano in population. Also per Exhibit A, the possibility of geographic growth by Llano appears to be nil.

8. By contrast, Marble Falls is larger than Burnet, the County Seat of Burnet County, is growing, and is larger than any other Burnet-County community. Local Chamber data peg the Marble Falls' estimated 1999 population at 9,500 -- almost triple the estimate for Llano. This correlates with the median ages of the two towns' residents: 55.5 at Llano; 33.9 at Marble Falls.

9. In 1994, retail purchases in Llano generated \$156,376 in sales-tax revenue, while retail activity in Marble Falls generated nearly fourteen times as much -- \$2,135,432. In the current year to date, the disparity is even greater (\$1,320,641 in sales tax generated in Marble Falls, almost 21 times the \$63,422 generated in Llano). In 1994, only six new building permits were issued in Llano. In Marble Falls, the total was 374. For the current year to date, no building permits have issued for Llano, while 110 have issued for Marble Falls. Based on commercial-account data from the utilities which serve Marble Falls and Llano, respectively, there are 589 active commercial (that is, business as opposed to residential) accounts in Marble Falls, but only 237 in Llano. Marble Falls has 16 places of worship, almost twice the number in Llano (9).

10. To accommodate Marble Falls' ongoing growth, the community has embarked on significant upgrades of its water-supply and sewer systems. The town has its own mayor and city council, administrative staff, professional Police and Fire protection, Municipal Court, Parks and Recreation Department, and airport. The local government employs a total

of 77 people. (By contrast, Llano has 37 employees.) The Marble Falls Police Department has 22 employees (12 of whom are officers) and seven vehicles. The Llano police force has only six employees and six cars. The Marble Falls Fire Department has 21 employees and seven vehicles. Llano, by contrast, has volunteer fire fighters. As of May 26, 1994, the Marble Falls Independent School District, which serves Marble Falls and surrounding areas, had a total enrollment (Pre-Kindergarten through Grade 12) of 2716. As of May 25, 1995, the Marble Falls Independent School District had a total enrollment of 2920, an increase of 204 students. By contrast, the current total enrollment in the Llano Independent School District, which serves Llano and surrounding areas, is only 1,384, less than 50% of the Marble Falls District's student roster.

11. By virtually every demographic indicator, Marble Falls is a much larger, more dynamic town than Llano. Marble Falls is also a quickly growing community, which Llano is not. Clearly, moving KBAE to Marble Falls would serve the public interest under Element Three of Revision of FM Assignment Policies and Procedures.

12. Adoption of Maxagrid's proposal would also serve the public interest under Element Four of Revision of FM Assignment Policies and Procedures, other public-interest factors. Exhibit B hereto, the Engineering Statement of Stephan Kramer, P.E., Maxagrid's consulting engineer, indicates that KBAE's Channel 284C3 Llano facility currently provides 1-mV/m service to approximately 31,000 people. By contrast, a Channel 285C3 facility at Marble Falls would serve 141,000 people -- about 455% more than KBAE at Llano. This substantially more efficient use of the spectrum would clearly serve the public interest.

Endicott, New York, 51 FCC 2d 50 (1974). Mr. Kramer's materials also indicate that a very 67 people in a very small area would lose a third aural service as a result of relicensing KBAE to Marble Falls and of substituting Channel 242A for Channel 284C3 at Llano. However, the great increase in overall service from KBAE more than outweighs the slight loss of reception service under Element Four of Revision of FM Assignment Policies and Procedures. When one also factors in the clear need for local service at Marble Falls (Element Three), it is beyond dispute that grant of Maxagrid's proposal will serve the public interest.

### **3. Other Matters**

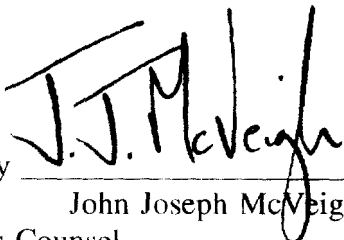
13. Consistent with the foregoing, Maxagrid intends, upon grant of its rule-making proposal, to promptly apply for construction permits for Channel 285C3 at Marble Falls and Channel 242A at Llano. Upon the grant of each permit, Maxagrid intends to construct the facility authorized and place it in operation.

### **III. CONCLUSION**

For the reasons stated, the staff must relicense KBAE to Marble Falls as proposed.

Respectfully submitted,

**MAXAGRID BROADCASTING CORPORATION**

By   
John Joseph McVeigh  
Its Counsel

Multinational Legal Services, P.C.  
11 Dupont Circle, Suite 700  
Washington, D.C. 20036  
(202) 797-7124

Date: June 22, 1995



## **EXHIBIT A**

## DECLARATION OF DUANE FOX

I, Duane Fox, offer the following Declaration of facts, gathered for filing with the Federal Communications Commission as part of the Comments of Maxagrid Broadcasting Corporation in MM Docket No. 95-49.

1. Local Chamber of Commerce data peg Llano's population at 3,000. Those data also show that Kingsland and Horseshoe Bay, both of which are also in Llano County, are larger than Llano (4,200 and 3,576, respectively). Local Chamber data peg the estimated 1999 population of Llano at 3,500, and the median age of Llano's resident at 55.5. Based on my investigation, Llano does not enjoy railroad service and has little if any prospects for geographic expansion. See Attachment 1. Llano has nine places of worship, and the town government employs 37 people.

2. Local Chamber of Commerce data peg Marble Falls' population at 4,500, larger than that of Burnet (4,100), the County Seat. The next-largest community is Spicewood, population 1,500. The local Chamber estimates the 1999 population of Marble Falls at 9,500 -- almost triple the estimate for Llano. The Chamber reports that the median age of Marble Falls' residents is 33.9. Marble Falls has 16 places of worship, and the town government employs 77 people.

3. Based on my investigation, in 1994, retail purchases in Llano generated \$156,376 in tax revenue, while retail activity in Marble Falls generated \$2,135,432 in sales taxes. For the current year to date, commercial activity in Marble Falls has generated \$1,320,641 in sales tax. Commercial activity in Llano has generated \$63,422 in sales tax. Also based on my investigation, in 1994, Llano issued only six new building permits. For Marble Falls and for the same period, the total was 374. For the current year to date, no building permits have issued for Llano, while Marble Falls has issued 110. Based on commercial-account data from the utilities which serve Marble Falls and Llano, respectively, there are 589 active commercial (that is, business as opposed

to residential) accounts in Marble Falls, but only 237 in Llano.

4. To accommodate the growth that Marble Falls has been experiencing, the community has embarked on significant upgrade of its water-supply and sewer systems. The town has its own Mayor and City Council, administrative staff, professional Police and Fire protection, Municipal Court, Parks and Recreation Department, and airport. The Marble Falls Police Department has 22 employees (12 of whom are officers) and seven vehicles. The Llano police force has only six employees and six cars. The Marble Falls Fire Department has 21 employees and seven vehicles. Llano, by contrast, has volunteer fire fighters. As of May 26, 1994, the Marble Falls Independent School District, which serves Marble Falls and surrounding areas, had a total enrollment (Pre-Kindergarten through Grade 12) of 2716. As of May 25, 1995, the Marble Falls Independent School District had a total enrollment of 2920, an increase of 204 students. By contrast, the current total enrollment in the Llano Independent School District, which serves Llano and surrounding areas, is only 1,384, less than 50% of the Marble Falls District's student roster.

The foregoing is true and correct to the best of my personal knowledge, information, and belief, under penalty of perjury.

DUANE FOX



Date: June 21, 1995

**ATTACHMENT 1 to EXHIBIT A**

*Llano County*  
*Chamber Of Commerce*

*700 Bessemer Llano, Texas 78643*

*(915) 247-5354*



June 20, 1995

KBAY 104.7  
PO Box 8715  
Horseshoe Bay, Texas 78657  
Att: Duane Fox

Dear Mr. Fox,

This letter is in regards to the information you requested.

Currently, there is no rail service to the City of Llano or Llano County. As for the possibility of our city physically growing. The majority of the property adjacent to the city limits is owned by ranchers and therefore is not being considered for development at this time.

If there is any other way this office can be of service, please do not hesitate to write or call.

Respectfully,

Jackie Hatfield  
Manager

*Llano Capital of Texas*

*Land of Legend and Lore*

*Home of Enchanted Rock*

## **EXHIBIT B**

STEPHAN M. KRAMER, P.E. AND ASSOCIATES  
BROADCAST AND FAA CONSULTING ENGINEERS  
10500 BIGHORN TRAIL, SUITE 100 • MCKINNEY, TX 75070 • (214) 529-5123

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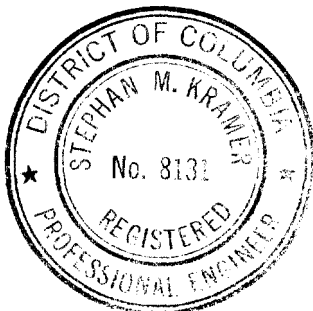
Engineering Affidavit

State of Texas       )  
                              )     ss:  
County of Collin    )

Stephan M. Kramer, being duly sworn, deposes and states that he is a Registered Professional Engineer licensed in Texas and the District of Columbia, that he holds a B.S. Degree in Electrical Engineering from the University of Akron, and that he is a qualified and experienced Communications Consulting Engineer whose expert testimony and works are a matter of record with the Federal Communications Commission having received numerous application grants. He further states Maxagrid Corporation retained the firm of Stephan M. Kramer, P.E. and Associates to prepare the attached Engineering Statement Exhibit B.

The deponent further indicates the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

This declaration is made under penalty of perjury under the laws of the United States.



*Stephan M. Kramer* PE 6-21-95

Stephan M. Kramer, P.E.  
Texas P.E. # 54370  
District of Columbia P.E. # 8131

STEPHAN M. KRAMER, P.E. AND ASSOCIATES

BROADCAST AND FAA CONSULTING ENGINEERS

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Exhibit B

Engineering Statement in Support of MM Docket 95-49 (Llano and  
Marble Falls, Texas) Filed by Maxagrid Corporation

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This Engineering Statement was prepared on behalf of Maxagrid Corporation, licensee of FM Station KBAE, Llano, Texas. Maxagrid proposed the reallocation of channel 284C3 to Marble Falls, Texas with replacement channel 242A at Llano.

The Commission requested specific area and population data for areas not served resulting from grant of the above rulemaking. A detailed area and population analysis was completed using 1990 Census data, to examine present and proposed service areas. For all FM facilities, the 60 dBu contour was used. The daytime service contour of 0.5mv/m was used for AM stations in areas with less than 2500 persons and the 2mv/m contour for areas over 2500 persons. During nighttime hours, the calculated RSS value was applied.

Those areas not served by either the re-allotted Marble Falls facility or the proposed Channel 242A substitution that are presently served by the existing KBAE facility were identified as follows: For daytime operation, all areas presently receive a minimum of five aural services. During nighttime hours, however, there exists an area measuring approximately 24 square miles located in Southeastern San Saba County and Southwestern Lampasas County that will have two aural services instead of three. The total population measured in this area equals sixty-seven (67) persons (16 in Lampasas County and 51 in San Saba County).



**STEPHAN M. KRAMER, P.E. AND ASSOCIATES**

**BROADCAST AND FAA CONSULTING ENGINEERS**

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Exhibit B (Page 2)

The existing population within the KBAE 60 dBu contour is 31,322 persons. The proposed KABE facility relocated to Marble Falls would cover approximately 141,409 persons. All areas within the proposed Marble Falls 60 dBm service contours were served by five or more existing aural services.